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TAGS: EGEN, ELAB, PINT, UK
SUBJECT: INCOMES POLICY -- THE BLACKLIST

REF: LONDON 566

SUMMARY: HMG'S PRESSURE TACTIC OF BLACKLISTING PRIVATE
SECTOR FIRMS BREACHING ITS 10 PERCENT PAY GUIDELINE HAS
COME UNDER ATTACK. PARLIAMENTARY DEBATE OVER THE ISSUE
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HAS BEEN ACRIMONIOUS WITH THE GOVERNMENT ARGUING THAT IT
IS USING ITS DISCRETIONARY POWERS IN THE NATIONAL INTER-
EST. THE TORIES CONTEND THAT BY ISSUING EXPLICIT THREATS
IN THE PRIVATE SECTOR, THE GOVERNMENT IS HEAVILY OVER-
REACHING ITS AUTHORITY. ABSTRACTING FROM THE HEATED RHET-
ORIC, THE GOVERNMENT FACES A DILEMMA: IN ECONOMIC TERMS,
IT IS INCREASINGLY COUNTERPRODUCTIVE TO RESIST RESTORING

A DEGREE OF FLEXIBILITY TO OVERALL LABOR MARKET OPERATIONS. YET, BY HOLDING FIRMLY TO ITS PAY GUIDELINE IN THE PUBLIC SECTOR, HMG CANNOT AFFORD GUIDELINE-STRETCHING PRIVATE SECTOR WAGE SETTLEMENTS. THUS, HMG HAS FELT COM-PELLED TO USE ITS CONSIDERABLE ECONOMIC LEVERAGE OVER INDIVIDUAL FIRMS TO INFLUENCE THE LEVEL OF PAY SETTLEMENT LEAVING ITSELF OPEN TO CHARGES OF ARBITRARILY ABUSING ITS CONSTITUTIONAL POWERS. THIS MESSAGE SKETCHES OUT THE POLITICAL, ECONOMIC AND LEGAL ASPECTS OF THE USE OF THE "BLACKLIST." END SUMMARY.

1. A PREVIOUS MESSAGE (LONDON 566) SET FORTH THE ECONOMIC DIFFICULTIES OF SUSTAINING AN INCOMES POLICY FOR MUCH MORE THAN 2 YEARS. IMPOSING A RELATIVELY STATIC SET OF WAGE CONSTRAINTS ON A DYNAMIC ECONOMY PRODUCES AN ACCUMULATION OF STRAINS IN THE LABOR MARKET. WITH BRITAIN'S CURRENT INCOMES POLICY HALFWAY THROUGH ITS THIRD YEAR, THE PROBLEMS OF INCOMES POLICY MANAGEMENT WERE THOROUGHLY AIRED DURING TWO RECENT PARLIAMENTARY DEBATES OF THE GOVERNMENT'S USE OF ITS ECONOMIC LEVERAGE TO CAJOLE INDIVIDUAL FIRMS INTO ACCEPTING THE PRESENT 10 PERCENT PAY GUIDE-LINE OR TO PUNISH FIRMS CONSIDERED TO BE IN BREACH OF THE GUIDELINE. HMG SANCTIONS, THOUGH LARGELY RELATED TO THE DENIAL OF GOVERNMENT CONTRACTS, ALSO INCLUDE POSSIBLE USE OF DISCRETIONARY POWERS CONTAINED IN PREVIOUS INCOMES LIMITED OFFICIAL USE

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POLICY LEGISLATION, INDUSTRIAL OR EMPLOYMENT LEGISLATION, AND EXPORT CREDIT GUARANTEE LEGISLATION. AT THE CORE OF THE SOMETIMES QUERULOUS PARLIAMENTARY DEBATES IS AN ARGUMENT OVER A STRICT VERSUS A LIBERAL INTERPRETATION OF EXISTING LEGISLATIVE AND CONSTITUTIONAL GRANTS OF AUTHORITY TO THE EXECUTIVE.

2. TO UNDERSTAND THIS DISTINCTION, A BRIEF SKETCH OF THE MECHANICS OF PAY RESTRAINT IS NECESSARY. UNLIKE THE HEATH POLICY WHERE PAY RESTRAINT WAS IMPOSED BY STATE, THE CURRENT INCOMES POLICY IS BASED ON VOLUNTARY COOPERATION WITH GOVERNMENT BY LABOR AND MANAGEMENT. DURING THE FIRST 2 YEARS OF PAY RESTRAINT (1975-1977) THE GOVERNMENT'S PRINCIPAL LEVERAGE WAS THE THREAT TO USE PRICE CONTROLS TO DENY FIRMS BREAKING THE GUIDE-LINE PRICE INCREASES TO OFFSET HIGHER LABOR COSTS. THE STRONG LABOR/MANAGEMENT CONSENSUS IN SUPPORT OF WAGE RESTRAINT MEANT THE THREAT WAS RARELY, IF EVER, CARRIED OUT.

3. WITH LIBERALIZED PRICE CONTROLS AND THE REFUSAL OF ORGANIZED LABOR TO ACCEPT ANOTHER RIGID PAY NORM, THE MANAGEMENT OF THE 1977/78 PAY ROUND BECAME CONSIDERABLY

MORE COMPLEX. LAST JULY, THE GOVERNMENT ISSUED A WHITE PAPER ON PAY RESTRAINT WHICH DIFFERED FROM THE WHITE PAPER GOVERNING THE TWO PREVIOUS ROUNDS OF PAY POLICY IN THAT IT DID NOT SPECIFY A HARD AND FAST PAY NORM. RATHER, THE HOPE WAS EXPRESSED THAT NATIONAL AVERAGE EARNINGS FOR THIS YEAR WOULD BE 10 PERCENT. AT THE SAME TIME, THE WHITE PAPER INDICATED GOVERNMENT CONTRACTS WOULD BE

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DENIED TO FIRMS AGREEING TO PAY INCREASES "QUITE CLEARLY INCONSISTENT WITH THE POLICIES SET OUT IN THIS WHITE PAPER." HOW THE TERM INCONSISTENT WAS TO BE DEFINED WAS NEVER MADE CLEAR. SOME IDEA OF HMG'S THINKING CAME EARLY IN THE PAY ROUND IN A HIGHLY PUBLICIZED CASE WHERE HMG REFUSED EXPORT CREDIT GUARANTEES TO THE MACKIE CORP. AFTER THAT FIRM GRANTED A 22 PERCENT INCREASE TO ITS EMPLOYEES. SEVERAL WEEKS LATER, ALTHOUGH THERE WERE PRESS

REPORTS THAT SOME HMG MINISTERS EXPRESSED REGRET THAT THE
12 PERCENT FORD SETTLEMENT EXCEEDED THE GUIDELINE,
HMG DID NOT IMPOSE SANCTIONS, WITH PRIME MINISTER CALLA-
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GHAN PUBLICLY STATING THERE WAS NO WAY IN WHICH THE GOV-
ERNMENT COULD PREVENT FORD FROM BREAKING THE 10 PERCENT
GUIDELINE.

4. IN NOVEMBER, THE FOCUS BEGAN TO SHIFT TO PUBLIC SEC-
TOR NEGOTIATIONS WITH THE LOCAL GOVERNMENT MANUAL WORK-
ERS, THE FIREMEN AND THE MINERS OCCUPYING CENTER STAGE.
THE TWO-MONTH FIREMEN'S STRIKE WHICH ENDED IN JANUARY
WORKED TO STRENGTHEN THE GOVERNMENT'S DETERMINATION TO
HOLD FIRMLY TO THE GUIDELINE IN THE PUBLIC SECTOR.

IT ALSO HAD THE EFFECT OF TRANSFORMING THE 10
PERCENT GUIDELINE FROM AN AVERAGE FIGURE TO A MINIMUM EN-
TITLEMENT.

5. FOR THE PRIVATE SECTOR, HMG DEVELOPED A PROCEDURE
UNDER WHICH INDIVIDUAL SETTLEMENTS WERE REPORTED TO THE
DEPARTMENT OF EMPLOYMENT (DOE) WHERE AN INITIAL DETERMINA-
TION WAS MADE OF THEIR CONSISTENCY WITH THE GUIDELINE.
THE DOE THUS BECAME THE INITIAL INSTRUMENT OF HMG'S EF-
ORTS TO CAJOLE FIRMS DETERMINED TO BE IN BREACH OF THE
GUIDELINE INTO RESTRUCTURING THEIR OFFERS. THIS PROCE-
DURE, WHILE LARGELY SUCCESSFUL, DID PRODUCE A NUMBER OF
CONFRONTATIONS BETWEEN JUNIOR CIVIL SERVANTS AND A RELA-
TIVE HANDFUL OF RECALCITRANT FIRMS WHICH OBJECTED EITHER
TO THE FINDING THAT THEY WERE IN BREACH OF THE GUIDELINE
OR TO THE GOVERNMENT'S EFFORTS TO GET THEM TO REOPEN NE-
GOIATIONS WITH THEIR EMPLOYEES. IN SUCH CASES, THE DOE
ESCALATED THE ISSUE ULTIMATELY TO AN INTERAGENCY CABINET-
LEVEL COMMITTEE WHICH EXPLAINED THE POSSIBLE CONSEQUENCES
TO THE FIRM IN QUESTION. FIRMS STILL BALKING AFTER BE-
ING THREATENED WERE "BLACKLISTED." IT WAS ONLY IN
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JANUARY, AFTER SEVERAL SUCH FIRMS COMPLAINED PUBLICLY
ABOUT BEING ON A GOVERNMENT BLACKLIST, THE EXISTENCE OF
WHICH THE GOVERNMENT WAS RELUCTANT TO CONFIRM, THAT THE
ISSUE CAME TO A HEAD IN PARLIAMENT.

6. THE CORE OF THE PARLIAMENTARY DEBATE WAS THE TORY CON-

TENTION THAT, WITH NO CLEARLY STATED PAY NORM IN THE WHITE PAPER, THE GOVERNMENT HAD TO BE BOTH SECRETIVE AND ARBITRARY IN DETERMINING WHETHER A FIRM WAS IN BREACH OF THE GUIDELINE. THE GOVERNMENT'S DISCRETIONARY POWERS UNDER EXISTING LEGISLATION WERE NOT REALLY AT ISSUE. RATHER IT WAS THEIR USE FOR A PURPOSE NOT ORIGINALLY INTENDED BY PARLIAMENT WHICH RAISED TORY IRE.

7. THE GOVERNMENT'S REPLY TO THE TORIES DID NOT ANSWER THE POINT ABOUT THE AMBIGUOUS NATURE OF THE GUIDELINE IN THE WHITE PAPER. INSTEAD HMG ARGUED IN TERMS OF THE OVERRIDING NATIONAL INTEREST IN CONTROLLING INFLATION AND THE CONSEQUENT NEED FOR BOTH THE PUBLIC AND THE PRIVATE SECTORS TO CONTRIBUTE TO THE PURSUIT OF THAT GOAL. DURING THE DEBATE, HMG ANNOUNCED THAT FUTURE GOVERNMENT CONTRACTS WOULD CONTAIN CLAUSES BINDING FIRMS TO OBSERVE PA GUIDELINES AND ENSURE THAT THEIR SUBCONTRACTORS DID LIKEWISE. SUCH CLAUSES HAD EXISTED IN CONTRACTS SIGNED DURING THE FIRST TWO PHASES OF PAY POLICY BUT TOOK THE FORM OF REFERENCES TO THE PREVIOUS WHITE PAPERS IN WHICH THE GUIDELINE HAD BEEN CLEARLY SPELLED OUT.

8. WHILE HMG WON PARLIAMENTARY VOTES ON THE QUESTION OF ITS HANDLING OF PAY POLICY, IT HAS UNDOUBTEDLY LOST SUPPORT IN THE BUSINESS COMMUNITY. THE CONFEDERATION OF BRITISH INDUSTRY REACTED SHARPLY TO THE NEW CONTRACT CLAUSES WHICH WERE VIEWED AS GIVING THE DOE ABSOLUTE DISCRETION TO DETERMINE WHETHER AN AMBIGUOUSLY STATED PAY GUIDELINE HAD BEEN BROKEN AND DENYING THE FIRM ANY RIGHT OF APPEAL. CBI ALSO ARGUED THAT ANY FIRM SIGNING A LONG-LIMITED OFFICIAL USE

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TERM CONTRACT WITH HMG COMMITS ITSELF TO ENFORCING PAY RESTRAINT FOR THE DURATION OF THE CONTRACT, WHATEVER THE SITUATION. MOREOVER, THAT FIRM WOULD BE COMMITTED TOENSURING THAT ITS FOREIGN AS WELL AS DOMESTIC SUBCONTRACT-

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ORS CONFORM TO THE GUIDELINE.

9. AT PRESENT, CBI AND HMG ARE IN THE MIDST OF THREE WEEKS OF DISCUSSION OF THE NEW PROCEDURES AND CLAUSES. THIS PERIOD HAS BEEN CHARACTERIZED AS A TIME WHEN BOTH SIDES CAN DISCUSS THE SITUATION IN A LESS PASSIONATE ATMOSPHERE. NEVERTHELESS, SOURCES AT CBI, WHILE CONTINUING TO SUPPORT INCOMES POLICY, VOICE CONSIDERABLE CONCERN ABOUT THE IMPLICATIONS OF THE NEW CONTRACT CLAUSES.

10. IN PRIVATE DISCUSSIONS WITH GOVERNMENT MINISTERS AN
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CIVIL SERVANTS, A WISH FOR A FIRMER LEGISLATIVE BASIS FOR THE PAY GUIDELINE IS OFTEN EXPRESSED. YET, THEY QUICKLY ADMIT THAT THE CURRENT ECONOMIC AND POLITICAL ENVIRONMENT PRECLUDES A STATUTORY PAY POLICY. THE HEART OF THE CURRENT EFFORT IS A VOLUNTARY CONSENSUS OF GOVERNMENT BUSINESS AND LABOR FAVORING PAY MODERATION. WHERE THIS CONSENSUS BREAKS DOWN, IS ON THE EXTENT TO WHICH THE GOVERNMENT SHOULD BE THREATENING TO USE ITS DISCRETIONARY POWERS TO OBTAIN COMPLIANCE. IT IS ON THIS POINT THAT MANY EMPLOYERS AND UNIONS PART COMPANY WITH THE GOVERNMENT.

11. THE LEGAL ARGUMENTS ARE COMPLEX. THERE IS GENERAL AGREEMENT THAT HMG HAS TAKEN A BROAD VIEW OF ITS AUTHORITY AS SET OUT IN THE WHITE PAPER. AT THE END OF THE SECOND DAY OF DEBATE, THE HOUSE OF COMMONS SUSTAINED THE GOVERNMENT BY DEFEATING A TORY-SPONSORED RESOLUTION "THAT THIS HOUSE DECLINES TO SUPPORT THE GOVERNMENT'S ARBITRARY USE OF ECONOMIC SANCTIONS AGAINST FIRMS AND WORKERS WHO HAVE NEGOTIATED PAY SETTLEMENTS BEYOND A RIGID LIMIT WHICH PARLIAMENT HAS NOT APPROVED; AND CALLS UPON THE GOVERNMENT TO WITHDRAW ITS NEW CONTRACT CLAUSES FOR PUBLIC PURCHASING." WHATEVER THE LEGAL MERITS OF THE TORY ARGUMENT, A JUDICIAL OPINION ON THE QUESTION WILL HAVE TO WAIT FOR A COURT CASE. PRESENT INDICATIONS ARE THAT SUCH A CASE IS EXTREMELY UNLIKELY.

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